Calendar No. 1011

98TH CONGRESS
2d Session

SENATE

REPORT
98–529

LABELING OF TEXTILE FIBER AND WOOL PRODUCTS

JUNE 25, 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1816]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1816) to amend the Textile Fiber Products Identification Act, the Tariff Act of 1930, and the Wool Products Labeling Act of 1939 to improve the labeling of textile fiber and wool products, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill do pass.

PURPOSE OF BILL

The objectives of S. 1816, as reported, are to clarify and improve country-of-origin labeling requirements for textiles and increase consumer awareness at the time of purchase of the product's country of origin. By using "time of purchase", the Committee is referring to the point in time the consumer pays for or promises to pay for an item and thereby receives an interest in the item.

The bill requires conspicuous country of origin labeling on domestic and foreign-made textile, fiber and wool products. Country-of-origin information is also required in mail order promotional descriptions for textile, apparel and wool products sold in the United States.

BACKGROUND AND NEEDS

Country-of-origin labeling is now required by the Textile Fiber Products Identification Act. This law is enforced by the Federal Trade Commission (FTC). In addition, the FTC has written interpretive regulations.

An imported textile or the package in which it is sold is now required to bear a stamp or tag showing the country where it was manufactured or processed. The label is required on textile goods imported

31–010 O

S263-28

for household use. In addition, by regulation, the FTC has required the label to be "conspicuously affixed" to the product. U.S.-produced products are not required to display a country-of-origin label.

Despite these requirements, consumers are sometimes misled as to the country of origin of textile and wool products. In part, this is because the label showing the country of origin is attached inconspicuously. In addition, bundled textile products with the country of origin marked only on the bundle or package are sometimes separated once they enter the United States. Finally, the statutes concerning country-of-origin labeling are not extensive, and some confusion as to implementation and enforcement apparently exists.

Where labels are inconspicuously placed or not attached at all, foreign-made textile products are easily mistaken for American-made products, since there is no law which requires domestically produced products to be labeled with the country of origin.

Even when labels are correctly attached, consumers who purchase textile products by mail may be unable to determine a product's country of origin because they are not able to examine the item at the time or point of purchase.

Legislative History

S. 1816 was introduced by Senator Thurmond on August 4, 1983. The bill was the subject of a hearing before the Commerce Committee's Consumer Subcommittee on April 25, 1984. At the hearing, testimony was received from interested parties including Senator Thurmond, domestic textile manufacturers, textile labor unions, and a textile importer. Written testimony was submitted by the FTC and a retail trade group.

On June 13, 1984, the Committee ordered S. 1816 reported with an amendment in the nature of a substitute, and an amendment to the title.

Summary of Major Provisions

As reported, S. 1816 adds more extensive and specific labeling requirements to the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939. The bill requires conspicuous placement of labels which contain country-of-origin information, requires both U.S. and foreign products to be labeled with the country of origin and requires labeling on product packaging, in addition to the item or items.

S. 1816 also requires limited country-of-origin disclosure in mail-order catalogues and direct-marketing literature offering textile products. Each printed textile product description would state that the product is made in the United States, imported, or both. If the product is imported, the specific country would not have to be identified in the catalogue description, as long as the word "imported" or other words to that effect are included.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 14, 1984.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1816, the Textile Fiber and Wool Products Identification Improvement Act, as ordered reported by the Senate Committee on Commerce, Science and Transportation, June 13, 1984.

We expect that enactment of S. 1816 would cost the Federal Government approximately $100,000 in 1985 and somewhat less in each fiscal year thereafter. No additional costs to state or local governments are expected to result from enactment of this bill.

S. 1816 would require that all textile products be labeled as to their country of origin. Mail order catalogues or sales literature would also be required to state this information. According to the Federal Trade Commission (FTC), which would be required to enforce these changes to current law, one-time costs of approximately $100,000 in fiscal year 1985 would be required to issue new regulations. Annual enforcement costs are not expected to increase significantly, unless the number of complaints increases substantially as a result of these changes.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner,
Director.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

Although S. 1816, as reported, contains extensive country-of-origin labeling requirements, the regulatory impact on the textile industry, if the bill is enacted, should be minimal. Many of the labeling requirements reflect current FTC regulations and advisory opinions.

NUMBER OF PERSONS COVERED

The number of persons covered by country-of-origin textile and wool labeling would expand under S. 1816. Currently, only foreign textile and wool producers, and domestic producers using foreign

materials, are covered by country-of-origin labeling provisions. S. 1816 extends country-of-origin labeling to U.S. textile and wool product manufacturers. The Committee believes the additional coverage is needed to clarify the country of origin of domestically produced goods. This view was supported at the hearing on S. 1816 by representatives of the domestic textile and wool industry, the industries most affected by the labeling requirements of S. 1816.

S. 1816 also contains a provision requiring mail-order and direct mail textile retailers to disclose whether their products are "imported" or "made in the U.S.A.". Such retailers are not now required by law or regulation to include such information in their sales literature. A 1969 FTC advisory opinion (34 Fed. Reg. 14,517; FTC Advisory Opinion Digest § 15.369) held that an importer of women's panty hose was required to make a clear and conspicuous disclosure of the foreign origin of the product in all mail-order promotional material. The FTC has viewed this opinion as applicable to all mail-order imported textile retailers. Accordingly, S. 1816, as reported, imposes a new regulatory burden only on mail-order retailers of domestic textile products. The Committee believes this expanded coverage is necessary since mail-order purchasers do not otherwise have the opportunity to be apprised of a textile or wool product's country of origin at the time of purchase.

ECONOMIC IMPACT

Enactment of S. 1816 would impose some additional cost on domestic textile manufacturers, arising from the need to label each garment as made in the United States. However, these costs would be small since new tags may not be necessary and few additional words are required. All domestic industry representatives who testified at the hearing on S. 1816 were willing to assume the additional cost.

Additional costs would also be imposed on mail-order and direct mail retailers offering domestic textile products. In the Committee's opinion, such costs are justified by the desirability of disclosing a product's origin to mail-order consumers at the time of purchase.

PRIVACY

S. 1816 will have no impact on the privacy of individuals affected by the bill.

PAPERWORK

No additional reporting requirements are imposed by S. 1816.

Section-by-Section Analysis

SECTION 1—SHORT TITLE

The first section provides that this Act may be called the "Textile Fiber and Wool Products Identification Improvement Act".

SECTION 2—TEXTILE LABELING

Section 2 amends section 4 of the Textile Fiber Products Identification Act (Act of Sept. 2, 1958, Pub. L. No. 85–897, 72 Stat. 1717) (codified at 15 U.S.C. §§ 70–70k (1980)) by adding a new paragraph

that requires textile fiber products manufactured or processed in the United States to be labeled as such. The amendment applies only to goods sold in the United States and does not apply to goods not covered by the Textile Fiber Products Identification Act. This amendment is intended to be consistent with current FTC country-of-origin labeling requirements, including its standards for determining when textile products are made in the United States and may be labeled as such.

SECTION 3—TEXTILE PACKAGE LABELING

The third section amends section 4 of the Textile Fiber Products Identification Act, by adding language that requires a country-of-origin label on any textile package intended for sale to the ultimate consumer. This label would be in addition to the label or tag on the product itself. A separate tag on the package is not required if the package is transparent, and all information on the label attached to the product can be clearly read.

Section 3 exempts hosiery from the requirement that a country-of-origin label be attached, provided that: (1) the hosiery package shows the country of origin; (2) the package is intended for sale to the ultimate consumer; and (3) the information on the package is applicable to all hosiery contained in the package. The Committee adopted this exception because it understood that attachment of a country-of-origin tag to the actual hosiery product would be impractical and unsightly. The Committee intends that this exception apply only to hosiery products.

SECTION 4—MAIL ORDER DISCLOSURE AND LOCATION OF TAG

This section adds language to section 4 of the Textile Fiber Products Identification Act to require that all textile fiber product descriptions contained in mail-order catalogues and direct-marketing literature state that the textile product advertised was "made in the U.S.A.", "imported" or both.

S. 1816, as reported, requires only products produced in the United States to be identified with the specific country-of-origin in mail-order and direct-marketing literature. For textile goods not produced in the United States, the specific country of origin is not required, so long as the product's description makes clear that the product was not produced in the United States.

The Committee chose not to require foreign-produced goods to identify the specific country of origin based on testimony during the hearing on S. 1816 that some mail-order and direct marketing retailers purchase identical textile products from two or more foreign countries, and market them as the same product.

Moreover, when the catalogue or circular offering the textile product is printed, the retailer may not know which foreign country will produce the product. Because of the disclosure burden these uncertainties potentially impose on mail-order and direct-marketing retailers, the Committee concluded that identification of the specific foreign country of origin was not necessary in mail-order and direct-marketing literature. The Committee expects the specific country of origin would be identified on the textile product itself, as well as any packaging, pursuant to sections 2 and 3 above.

The Committee does not intend to imply that the exact words "made in the U.S.A." or "imported" are the only acceptable phrases in mail-order or direct-marketing literature. Other words or phrases with the same meaning may also be used. For instance, in place of the word "imported" the retailer could use "product of foreign country" or disclose the specific foreign country where the product was manufactured. The Committee intends only that mail-order and direct-marketing consumers be able to determine, at the time of purchase, whether the product was produced in the United States or imported.

The country-of-origin disclosure in mail-order and direct marketing literature should be located so that it is plainly visible to consumers and clearly explains the country of origin of each product. The Committee anticipates this can best be accomplished by including the country-of-origin disclosure with each textile product description. Some other arrangement in the catalogue or sales literature may be used, however, provided the country-of-origin disclosure is conspicuous and not misleading. With respect to both the appropriate disclosure language to be used and the location of the disclosure, the Committee expects the FTC to promulgate guidelines and provide assistance to retailers which will implement the objectives of the bill.

Section 4 states it applies to mail-order catalogues and mail-order promotional materials "used in the direct sale or direct offering for sale" of textile products. Because the Committee's intent is to provide notice of the textile products' country of origin at the time and point of purchase, mail-order catalogues and promotional material should be defined so as to include any printed material or product samples distributed or shown to consumers and from which they may purchase textile products, by mail, telephone or some other method, without examining the actual product purchased. Section 4 is not intended to apply to any nonprint advertising.

Section 4 also requires that the textile product's tag, stamp or label disclosing the country of origin be located in the most conspicuous place on the inner side of the textile product, or on the textile product. If the product has a neck, the most conspicuous place on the inside would be the center of the neck, midway between the shoulder seams. This specific language concerning textile products with necks is intended by the Committee to allow location of the country-of-origin marking at the same location now required by the United States Customs Service pursuant to the Tariff Act of 1930.

The section 4 provision concerning the most conspicuous location is not intended to change the FTC's interpretation of conspicuous location as required in the Commission's rules 15 and 16 (16 C.F.R. § 303.15–.16 (1984)) promulgated pursuant to the Textile Fiber Products Identification Act. The Committee's most conspicuous location language was included to clarify congressional intent that country-of-origin tags must be conspicuous and to indicate congressional support for FTC efforts to assure conspicuous location of these tags.

SECTION 5—WOOL LABELING

This section amends section 4 of the Wool Products Labeling Act of 1939 (Act of Oct. 14, 1940, ch. § 71, 54 Stat. 1128) (codified as amended at 15 U.S.C. §§ 68–68j), by adding a paragraph requiring all wool

products sold in the United States, and covered by the act, to be labeled with the country of origin. This section is intended to be consistent with current FTC country-of-origin labeling requirements, including its standards for determining when textile products are made in the United States and may be labeled as such.

SECTION 6—MAIL ORDER DISCLOSURE AND LOCATION OF TAG

This section adds language to section 4(a) of the Wool Products Labeling Act of 1939 to require that all wool product descriptions contained in mail-order catalogues and direct-marketing literature state that the textile product advertised was "made in the U.S.A.", "imported" or both.

The Committee intends that this section make the same substantive changes in the Wool Products Labeling Act of 1939 as those made in the Textile Fiber Products Identification Act, by section 4 of this bill. Accordingly, mail-order and direct-market retailing of wool products is to be subject to the same requirements as those imposed on textiles as explained in this report's discussion of section 4.

Section 7 also requires that the wool product's tag, stamp or label disclosing the country of origin be located in the most conspicuous place on the inner side of the wool product, or on the outside of the wool product. If the product has a neck, the bill provides the most conspicuous place on the inside would be the center of the neck, midway between the shoulder seams. The provisions in section 7 are intended to amend the substance of the Wool Products Labeling Act of 1939 in the same way section 4 of this bill amends the Textile Fiber Products Identification Act.

SECTION 7—WOOL PACKAGE LABELING

Section 7 of S. 1816 amends section 5 of the Wool Products Labeling Act of 1939, by adding language that requires a country-of-origin label on any wool product package intended for sale to the ultimate consumer. This label would be in addition to the label or tag on the product itself. A separate tag on the package is not required if the package is transparent, and all information on the label attached to the product can be clearly read.

Section 7 also excepts hosiery from the requirement that a country-of-origin label be attached provided the hosiery package shows the country of origin the package is intended for sale to the ultimate consumer; and the information on the package is applicable to all hosiery in the package. The Committee adopted this exception because it understood that the attachment of a country-of-origin tag to the actual hosiery product would be impractical. The Committee intends that this exception apply only to hosiery products.

SECTION 8—EFFECTIVE DATE

This section provides that the amendments made by S. 1816 shall be effective 90 days after the bill's enactment. The Committee intends that the bill's provisions shall apply only to products and advertising literature produced beyond 90 days after this bill is enacted.

Votes in Committee

Senator Kasten moved to report S. 1816 with an amendment in the nature of a substitute.

On a voice vote, S. 1816, with an amendment in the nature of a substitute and an amendment to the title, was ordered favorably reported.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

The Textile Fiber Products Identification Act

Section 4 of that Act

Sec. 4. (a) * * *

(b) Except as otherwise provided in this Act, a textile fiber product shall be misbranded if a stamp, tag, label, or other means of identification, or substitute therefor authorized by section 5, is not on or affixed to the product showing in words and figures plainly legible, the following:

(1)–(4) * * *

(5) If it is a textile fiber product processed or manufactured in the United States, it be so identified.

(c)–(d) * * *

[(e) This section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each textile fiber product contained in a package if (1) such textile fiber products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the textile fiber products contained therein, the information required by subsection (b), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein.]

(e) For purposes of this Act, in addition to the textile fiber products contained therein, a package of textile fiber products intended for sale to the ultimate consumer shall be misbranded unless such package has affixed to it a stamp, tag, label, or other means of identification bearing the information required by subsection (b), with respect to such contained textile fiber products, or is transparent to the extent it allows for the clear reading of the stamp, tag, label, or other means of identification on the textile fiber product, or in the case of hosiery items, this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (b), and (3) the information on the

stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein.

(f)-(h) * * *

(i) For the purposes of this Act, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States, or imported, or both.

(j) For purposes of this Act, a textile fiber product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams, or if such product does not contain a neck in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product, or in the case of hosiery items on the outer side of such product or package.

THE WOOL PRODUCTS LABELING ACT OF 1939

Section 4 of that Act

SEC. 4. (a) A wool product shall be misbranded—

(1) * * *

(2) If a stamp, tag, label, or other means of identification, or substitute therefor under section 5, is not on or affixed to the wool product and does not show—

(A)-(C) * * *

(D) the name of the country where processed or manufactured.

(b)-(d) * * *

(e) For the purpoes of this Act, a wool product shall be considered to be falsely or deceptively advertised in any mail order promotional material which is used in the direct sale or direct offering for sale of such wool product, unless such wool product description states in a clear and conspicuous manner that such wool product is processed or manufactured in the United States, or imported, or both.

(f) For purposes of this Act, a wool product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams, or if such product does not contain a neck in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product or in the case of hosiery items, on the outer side of such product or package.

Section 5 of that Act

SEC. 5. [Any person] *(a) Any person* manufacturing for introduction, or first introducing into commerce a wool product shall affix thereto the stamp, tag, label, or other means of identification required by this Act, [15 USCS §§ 68 et seq.], and the same, or substitutes therefor containing identical information with respect to content of the

wool product or any other products contained therein in an amount of 5 per centum or more by weight and other information required under section 4, [15 USCS § 68b], shall be and remain affixed to such wool product, whether it remains in its original state or is contained in garments or other articles made in whole or in part therefrom, until sold to the consumer: *Provided*, That the name of the manufacturer of the wool product need not appear on the substitute stamp, tag, or label if the name of the person who affixes the substitute appears thereon

[Any person] (*b*) *Any person* who shall cause or participate in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to a wood product with intent to violate the provisions of this Act, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

(*c*) *For the purposes of subsections* (*a*) *and* (*b*) *of this section, any package of wool products intended for sale to the ultimate consumer shall also be considered a wool product and shall have affixed to it a stamp, tag, label, or other means of identification bearing the information required by section 4, with respect to the wool products contained therein, unless such package of wool products is transparent to the extent that it allows for the clear reading of the stamp, tag, label, or other means of identification affixed to the wool product, or in the case of hosiery items this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if* (*1*) *such hosiery products are intended for sale to the ultimate consumer in such package,* (*2*) *such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection* (*4*)*, and* (*3*) *the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each hosiery product contained therein.*

○

Calendar No. 1035

98TH CONGRESS
2d Session

SENATE

REPORT
98–538

SUPPORT FOR A NATIONAL STORM PROGRAM

JUNE 28 (legislative day, JUNE 25), 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. Con. Res. 109]

The Committee on Commerce, Science, and Transportation, to which was referred the concurrent resolution (S. Con. Res. 109) expressing the sense of the Congress that the Federal Government take immediate steps to support a national STORM Program, having considered the same, reports favorably thereon without amendment and with amendments to the preamble and recommends that the concurrent resolution do pass.

PURPOSE OF RESOLUTION

The resolution, as reported, encourages the Federal Government to support funding of a national STORM Program to minimize damage caused by stormscale weather systems through more precise and timely forecasting of when and where stormscale weather will occur.

BACKGROUND AND NEEDS

STORM is an acronym for Stormscale Operational and Research Meteorology. Stormscale weather consists of weather systems ranging in size from less than 1 mile to 400 miles, including tornadoes, downbursts, thunderstorms, flash floods, and local heavy snow.

Stormscale weather accounts for annual economic losses of $20 billion in the United States and claims about 1,000 lives per year. The Committee believes that a national STORM Program would significantly reduce both the damage and the loss of life caused by stormscale weather through improved prediction and warning capabilities.

31–010 O

S263-29

The STORM Program would coordinate many Federal operational and research meteorological activities under the leadership of the National Oceanic and Atmospheric Administration (NOAA). The Committee recognizes that much of the technology needed to adequately monitor and predict severe weather is at hand or under development. The Committee believes, however, that further Federal support for and coordination of these activities is needed to achieve proper utilization of this technology, and would best be realized under the auspices of the STORM Program.

Important components of the STORM Program include:

1. installation of a new generation of weather radar (NEXRAD) to replace the obsolete 26-year-old National Weather Service radar system;
2. development of improved meterological sensors for satellite deployment (GOES NEXT);
3. a ground-based wind profiler system to measure wind turbulence, speed, and direction;
4. automated weather stations;
5. improved computer systems to convert raw weather data into more rapidly disseminated forecast information; and
6. maintenance of a two polar satellite system.

The Committee further notes that an operational system of wind profilers—like that to be tested under the STORM Program—would be able to supply information on wind conditions in the troposphere and lower stratosphere throughout the United States. This information could be used by commercial airlines to route traffic to take advantage of tail winds and avoid unnecessary headwinds. Estimates show that fuel cost savings would be as high as 3 percent of the more than 10 billion gallons used each year, with an annual dollar savings to the industry of over $300 million.

Below is a table showing estimated severe weather losses for each state compiled by the National Climate Data Center of the National Environmental Data and Information Service, NOAA. This represents only a partial listing of damages from stormscale weather.

TABLE 1.—SEVERE WEATHER LOSSES—ANNUAL AVERAGE LOSSES

[Millions of dollars]

	Deaths	Injuries	Losses
Alabama	62	236	83
Alaska	10	6	58
Arizona	9	17	134
Arkansas	57	103	374
California	40	397	569
Colorado	9	22	188
Connecticut, Massachusetts, New Jersey, Rhode Island, and Vermont	9	85	233
Delaware, Maryland, and Virginia	17	82	68
Florida	17	108	61
Georgia	40	85	392
Hawaii	4	24	117
Idaho	1	3	36
Illinois	10	134	221
Indiana	12	102	300
Iowa	9	106	233
Kansas	10	82	368
Kentucky	11	121	62
Louisiana	20	124	314
Maine and New Hampshire	3	9	30
Michigan and Wisconsin	8	49	58
Minnesota	9	81	342
Mississippi	15	160	86
Missouri	8	80	76
Montana	2	13	36
Nebraska	14	44	470
Nevada	0	0	4
New Mexico	4	7	114
New York	14	31	67
North Carolina	14	34	87
North Dakota	1	20	43
Ohio	15	163	366
Oklahoma	27	110	307
Oregon	6	2	57
Pennsylvania	13	58	326
South Carolina	11	28	153
South Dakota	3	16	39
Tennessee	4	76	56
Texas	44	406	1,465
Utah	1	3	21
Washington	6	11	64
West Virginia	3	13	29
Wyoming	4	32	20

BEST COPY AVAILABLE

LEGISLATIVE HISTORY

Senate Concurrent Resolution 109 was introduced by Senator Hollings on May 2, 1984. The resolution, as reported, has 21 cosponsors. Committee cosponsors are Senators Hollings, Inouye, Heflin, Stevens, Trible, Ford, Riegle, Lautenberg, Long, and Exon.

The Committee ordered Senate Concurrent Resolution 109 reported with an amendment on June 13, 1984 by unanimous vote.

A companion resolution, House Concurrent Resolution 203, was introduced on November 1, 1983 by Representative Fuqua, and referred to the House Committee on Science and Technology.

SECTION-BY-SECTION ANALYSIS

The resolution has four operative clauses.

The first clause states the sense of the Congress that the Federal Government should support funding for a national STORM Program under NOAA's leadership with the cooperation of other Federal departments and agencies.

NOAA has been designated as the lead agency because four components of NOAA are involved in stormscale meteorology. The National Weather Service, the Environmental Research Laboratory, the Environmental Data and Information Service, and the National Earth Satellite Service are all involved in stormscale research and operational programs. Other agencies expected to be involved in the STORM Program are the Department of Defense, the Department of the Interior, the Federal Aviation Administration, the Environmental Protection Agency, the National Aeronautics and Space Administration, and the National Science Foundation.

The second clause of the resolution suggests that the President report to the Congress by January 1, 1985 and every fifth year thereafter on the proposed activities of the STORM Program and corresponding budgetary requirements. The Committee intends to support funding for the STORM Program and expects the Federal Government to propose specific program activities and request necessary funds to carry out the activities.

The third clause states that the President's plan for the national STORM Program should specify the departments or agencies of the Federal Government that will conduct specific activities. The Committee believes that proper coordination of the activities comprising the STORM Program can occur only if the Federal Government assigns specific responsibilities to specific agencies and departments.

The final clause of the resolution calls for the President to report to the Congress by January 1, 1986 on the progress made in implementing the STORM Program. The Committee believes that a timely progress report from the President will help the Committee properly execute its oversight of the STORM Program in future years.

○

BEST COPY AVAILABLE

98TH CONGRESS
2d Session
SENATE
REPORT
98-539

FISHERMEN'S PROTECTIVE ACT OF 1967 AUTHORIZATION

JUNE 28 (legislative day, JUNE 25), 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 5051]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 5051) to improve the operation of the Fishermen's Protective Act of 1967, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

PURPOSE OF BILL

The bill, as reported, would authorize the vessel seizure insurance program under section 7 of the Fishermen's Protective Act of 1967 for fiscal years 1985, 1986, and 1987. This legislation also amends the Fishermen's Protective Act of 1967 to consolidate within the Department of State the administration of the section 3 reimbursement program; to clarify applicability of the act to vessels seized in a manner inconsistent with international law; to require reimbursement under section 3 unless there is clear and convincing evidence that a seizure was in accordance with international law as recognized by the United States; and to make these amendments applicable to all claims arising from seizures occurring after April 1, 1983.

BACKGROUND AND NEEDS

Section 7 of the Fishermen's Act of 1967 indemnifies U.S. fishermen for some risks of vessel seizure by foreign countries. U.S. fishing vessel owners may enter into an agreement with the Secretary of Commerce to cover financial losses resulting from seizures by foreign countries on the basis of claims of oceanic jurisdiction not recognized by the United States. The program was recently restructured so that reimbursements are made only out of fees paid into the Fishermen's Guaranty Fund by participating industry members.

31-010 O

S263-30

Eligibility for reimbursement under this "self-insurance" program is extended to a participating vessel owner when a foreign claim underlying a vessel seizure is unrelated to fishery conservation and management; fails to consider traditional practices of U.S. fishing vessels; involves conditions and restrictions more onerous than those applied to foreign fishing vessels in the U.S. Fishery Conservation Zone; or fails to allow American fishing vessels equitable access to fishery resources under the foreign country's exclusive management authority.

Covered risks under section 7 of the act include: (1) damage to, or destruction or confiscation of, the vessel or its equipment; (2) dockage or utilities fees; (3) the market value of the fish caught before the seizure and confiscated or spoiled because of seizure; and (4) up to 50 percent of gross income lost as a direct result of the seizure.

Under section 3 of the act, the Secretary of State reimburses the vessel owner for any fines, license fees, registration fees, or other direct charges incurred by an owner during seizure or detention.

The U.S. tuna purse seine vessels fishing in the eastern tropical and western Pacific and the shrimp vessels operating off the coast of South America are the two major fleets using the section 7 program. Since the program began in 1968, 215 claims totaling $9,910,800 have been paid. During that period, $3,961,200 has been appropriated from the U.S. Treasury and $8,057,400 has been collected in fees for administering the program and paying claims.

Tuna are highly migratory fish which range through the 200-mile zones of many nations and can only be effectively conserved and managed by international agreement. The United States has never asserted or recognized unilateral coastal nation jurisdiction over tuna beyond 12 miles from the coast. However, Latin American and Western Pacific nations claim jurisdiction over tuna out to 200 miles off their coasts. Therefore, U.S. tuna fishermen who operate beyond 12 miles but within 200 miles of foreign coastlines face the threat of seizure based on claims not recognized by the United States. Distant water U.S. shrimp vessels have been seized by foreign countries for failure to comply with laws that, in comparison with U.S. laws, are believed to be excessively burdensome.

Some recent claims filed by tuna and shrimp boat owners have been delayed due to several difficulties that have occurred in recent years in the administration of Fishermen's Protective Act of 1967. The amendments to the Fishermen's Protective Act of 1967 proposed in H.R. 5051 respond to these perceived problems in the operation of the act.

Legislative History

H.R. 5051 was introduced on March 7, 1984. The House Merchant Marine and Fisheries Committee's Subcommittee on Fisheries and Wildlife Conservation and the Environment held a hearing on this legislation on March 20. The subcommittee marked up the bill and adopted it without amendment on March 22. On April 11, 1984, the Committee on Merchant Marine and Fisheries adopted amendments in a markup session and by unanimous voice vote ordered H.R. 5051 reported to the House.

The House passed the bill on April 30, 1984; the bill was referred to the Commerce Committee on May 2, 1984. At their June 13 markup, the Committee ordered the bill reported with amendments.

Summary of Major Provisions

H.R. 5051, as reported, would:

1. Amend section 7(e) of the Fishermen's Protective Act of 1976 provide a 3-year authorization for the vessel reimbursement program through fiscal year 1987.
2. Transfer administration of the Fishermen's Protective Fund from the Secretary of the Treasury to the Secertary of State.
3. Clarify that the Fishermen's Protective Act of 1967 applies to seizures of U.S. vessels which occur on the basis of jurisdictional claims that are recognized by the United States but exercised in a manner inconsistent with international law, as recognized by the United States.
4. Amend the Fishermen's Protective Act of 1967 to eliminate the provision that there be no dispute as to the material facts with respect to the location or activity of a U.S. vessel at the time of seizure in order for the vessel owner to be considered eligible for payment under the Fishermen's Protective Act of 1967. In lieu of this present provision, the bill requires the Secretary of State to take steps to secure release of a vessel and its crew and to make a certification as to the reimbursable amount unless there is clear and convincing credible evidence that the seizure was not contrary to the U.S. policies set forth in the Fishermen's Protective Act of 1967.
5. Specify that provisions of the Fishermen's Protective Act of 1967 shall not apply with respect to a seizure made in accordance with any applicable convention or treaty which has been made with the advice and consent of the Senate and was in force and effect for the United States and the seizing country at the time of the seizure.
6. Provide that amendments to the Fishermen's Protective Act of 1967 in section 3 of this bill apply with respect to seizures made after April 1, 1983, by foreign countries to U.S. vessels.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 26, 1984.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 5051, a bill to improve the operation of the Fishermen's Protective Act of 1967.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

JUNE 26, 1984.

1. Bill number: H.R. 5051.

2. Bill title: A bill to improve the operation of the Fishermen's Protective Act of 1967.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, June 13, 1984.

4. Bill purpose: H.R. 5051 would extend through fiscal year 1987 the authorization for the Fishermen's Guaranty Fund (Department of Commerce), which provides compensation to United States vessel owners and crews for certain financial losses incurred as a result of seizures of their vessels by foreign governments. It would transfer administration of the Fishermen's Protective Fund from the Secretary of the Treasury to the Secretary of State, and clarify criteria for reimbursements made pursuant to the Fishermen's Protective Act.

Appropriations to date in fiscal year 1984 for the Fishermen's Guaranty Fund are $2.1 million. The President is requesting $1.8 million in 1985 for this purpose.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1985	1986	1987	1988	1989
Estimated authorization level	2.2	2.3	2.4	.....	.....
Estimated outlays	2.2	2.3	2.4	.....	.....

The costs of this bill fall within budget function 370.

Basis of estimate: The estimated authorization level for fiscal years 1985 through 1987 reflects CBO's baseline estimate for the Fishermen's Guaranty Fund. Outlays are estimated based on historical spending patterns.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO Estimate: On April 6, 1984, the Congressional Budget Office prepared a cost estimate for S. 2463, as ordered reported by the Senate Committee on Commerce, Science and Transportation, March 27, 1984. S. 2463 allows the Fishermen's Guaranty Fund to make disbursements in fiscal year 1985 from fees collected pursuant to the Fishermen's Protective Act.

On April 13, 1984, the Congressional Budget Office prepared a cost estimate for H.R. 5051, as ordered reported by the House Committee on Merchant Marine and Fisheries, April 11, 1984. The House version of H.R. 5051 provided a permanent authorization rather than a 3-year authorization for the Fishermen's Guaranty Fund. Estimated budget authority and outlays for fiscal years 1985 through 1987 are identical in both versions of H.R. 5051.

9. Estimate prepared by: Mary Maginniss.
10. Estimate approved by: James L. Blum, Assistant Director, for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

The bill, as reported, reauthorizes for 3- years section 7 of the Fishermen's Protective Act of 1967. An additional provision of H.R. 5051 provides that the certification and reimbursement of claims be administered by the Secretary of State, thus consolidating functions currently performed by both the Secretary of State and the Secretary of the Treasury. No increased regulatory structure is required to fulfill the obligations created by the bill.

The remaining provisions clarify the applicability of the act with respect to eligibility for reimbursement for vessel owners. None of these changes will subject any individuals or businesses to additional regulation.

There will be no adverse economic impact on individuals or businesses imposed by the provisions of this legislation. There will be no impact on the personal privacy of any affected individuals, nor will there be additional paperwork as a result of the amendments contained in H.R. 5051.

Section-by-Section Analysis

The bill reauthorizes section 7 of the Fishermen's Protective Act of 1967, the voluntary insurance program to compensate U.S. fishing vessel owners who suffer financial losses resulting from the seizure of their vessels by foreign governments on the basis of jurisdictional claims not recognized by the U.S. Government. Further, the bill consolidates the administration of the Fishermen's Protective Fund within the Department of State and makes other amendments in the applicability of the act.

SECTION 1

This section reauthorizes section 7 of the Fishermen's Protective Act of 1967 for 3 more years, moving the expiration date to October 1, 1987.

SECTION 2

This section consolidates in one department, the Department of State, certification and reimbursement of payments due a vessel owner in order to cover any fine or other direct charge paid in order to secure release of a seized vessel or its crew. Currently, the Department of State makes the certification and transmits it to the Department of the Treasury, which pays the certified amount.

SECTION 3

Section 3(a)(1) clarifies the applicability of the act to vessel seizures where a foreign country claims jurisdiction recognized by the United

States, but exercises that jurisdiction in a manner inconsistent with international law as recognized by the United States. This proposed clarification is prompted by a recent incident in which Mexico claimed "hot pursuit" when attempting to justify the seizures of two U.S. shrimp boats by Mexican vessel. Under rules of international law, hot pursuit must be initiated when the pursued vessels are within the jurisdiction of the pursuing government's vessels. It has been asserted that the shrimp boats were within the U.S. Exclusive Economic Zone when the Mexican vessels commenced "hot pursuit." While the United States recognizes Mexico's claim that U.S. shrimp boats cannot fish in Mexican waters without Mexican permits, there is a dispute of fact regarding where the boats were fishing and whether the pursuit into U.S. waters was carried out in accordance with established procedures of international law.

The purpose of the proposed change in the act is to ensure that seizures incident to unlawful hot pursuit result in appropriate reimbursement for U.S. vessel owners.

Section 3(a)(2), on a directly related point, eliminates the provision that there be no dispute as to the material facts with respect to the location or activity of a U.S. vessel at the time of seizure in order for the vessel owner to be eligible for payment under the act. Under current law, any assertion by a foreign government of a wrongdoing by a U.S. vessel can lead to a dispute as to material fact so that reimbursement can be denied or delayed.

The amendment proposed in H.R. 5051 would deny reimbursement where there is "clear and convincing credible evidence" that the seizure was not unlawful. This change is consistent with notions of due process, that claimants should be presumed to have acted in a manner deemed lawful by the United States.

There are several instances of tuna and shrimp boats seizures in which questions have arisen with respect to the location of the vessel at the time of the seizure. In one case, the Brazilian government provided to the State Department geographic coordinates of the vessel's location at the time of the seizure that place the vessel several miles inland from the coast of Brazil. Without the proposed change, as long as there remains a dispute as to material facts, reimbursement can be denied, or at least indefinitely delayed.

Section 3(b) specifies that provisions of the act shall not apply with respect to a seizure made in acordance with any applicable convention or treaty which has been made with the advice and consent of the Senate and was in force and effect for the United States and the seizing country at the time of the seizure. This proposed change would require congressional approval of agreements affecting the rights exercised by U.S. fishermen.

Section 3(c) provides that all changes in the Fishermen's Protective Act of 1967 contained in this legislation apply to foreign seizures of U.S. vessels occurring after April 1, 1983.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is

enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman) :

THE FISHERMEN'S PROTECTIVE ACT OF 1967

SECTION 2 OF THAT ACT

SEC. 2. If—

[(1) any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or]

(1) any vessel of the United States is seized by a foreign country on the basis of claims to jurisdiction that are not recognized by the United States, or on the basis of claims to jurisdiction recognized by the United States but exercised in a manner inconsistent with international law as recognized by the United States; or

(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

(A) are unrelated to fishery conservation and management,

(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the fishery Conservation and Management Act of 1976), or

(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

[and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—]

the Secretary of State, unless there is clear and convincing credible evidence that the seizure did not meet the requirements under paragraph (1) or (2) as the case may be, shall immediately take such steps as are necessary—

(i) for the protection of such vessel and for the health and welfare of its crew;

(ii) to secure the release of such vessel and its crew; and

(iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 1973(a) of this title.

SECTION 3 OF THAT ACT

SEC. 3. (a) In any case where a vessel of the United States is seized by a foreign country under the conditions of section 1972 of this title and a fine, license fee, registration fee, or any other direct charge must

be paid in order to secure the prompt release of the vessel and crew, the owners of the vessel shall be reimbursed by the [Secretary of the Treasury in the amount certified to him by the Secretary of State] *Secretary of State in the amount determined and certified by him* as being the amount of the fine, license fee, registration fee, or any other direct charge actually paid. For purposes of this section, the term "other direct charge" means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee. Any reimbursement under this section shall be made from the Fishermen's Protective Fund established pursuant to section 1979 of this title.

(b) The Secretary of State shall make a *determination and certification* under subsection (a) of this section as soon as possible after he is notified pursuant to section 1972(b) of this title of the amounts of the fines, fees, and other direct charges which were paid by the owners to secure the release of their vessel and crew. The amount of reimbursement made by the Secretary of [the Treasury] *State* to the owners of any vessel under subsection (a) of this section shall constitute a lien on the vessel which may be recovered in proceedings by libel in rem in the district court of the United States for any district within which the vessel may be. Any such lien shall terminate on the ninetieth day after the date on which the Secretary of [the Treasury] *State* reimburses the owners under this section unless before such ninetieth day the United States initiates action to enforce the lien.

SECTION 4 OF THAT ACT

SEC. 4. The provisions of this chapter shall not apply with respect to a seizure made by a country at war with the United States or a seizure made in accordance with the provisions of [any fishery convention or treaty to which the United States is a party.] *any applicable convention or treaty, if that treaty or convention was made with advice and consent of the Senate and was in force and effect for the United States and the seizing country at the time of the seizure.*"

SECTION 5 OF THAT ACT

SEC. 5. (a) The Secretary of State shall—

(1) immediately notify a foreign country of—

(A) any reimbursement made by [the Secretary of the Treasury] *him* under section 1973 of this title as a result of the seizure of a vessel of the United States by such country,

SECTION 7 OF THAT ACT

SEC. 7. (a)–(d) * * * *

(e) The provisions of this section shall be effective until [October 1, 1984] *October 1, 1987*; except that payments may be made under this section only to such extent and in such amounts as are provided in advance in appropriation Acts.

(f) * * * *

SECTION 9 OF THAT ACT

SEC. 9. There is created a Fisherman's Protective Fund which shall be used by the [Secretary of the Treasury] *Secretary of State* to reimburse owners of vessels for amounts [certified to him by the Secretary of State] *determined and certified by him* under section 1973 of this title. The amount of any claim or portion thereof collected by the Secretary of State from any foreign country pursuant to section 1975(a) of this title shall be deposited in the fund and shall be available for the purpose of reimbursing vessel owners under section 1973 of this title; except that if a transfer to the fund was made pursuant to section 1975(b)(1) of this title with respect to any such claim, an amount from the fund equal to the amount so collected shall be covered into the Treasury as miscellaneous receipts. There is authorized to be appropriated to the fund (1) the sum of $3,000,000 to provide initial capital, and (2) such additional sums as may be necessary from time to time to supplement the fund in order to meet the requirements of the fund.

○